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Supreme Court, U.S.
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No 99-529

In The
Supreme Court of the United States

Victoria Talyansky,
Petitioner,

v.

Xerox and J. M. Ishler as Division Manager,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

PETITIONER'S REPLY BRIEF

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In my reply to Respondents' Brief in Opposition I would like to comment the Respondents' statements that support my claim.

DEFENDANTS AVOIDED AND IGNORED FACTS:

I can't believe the defendants don't know that due to Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981) and McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)[1] they have to follow some order of admitting or denying the facts I presented in my complaint, not IGNORING them.

1. I did not find any explanation in respondents' brief why I wasn't given any opportunity to move to another department or even to another building in Ishler's division. So many co-workers had this choice!!! (Hostile Work Environment).
2. I did not find any explanation why my verbal complaint about sexual harassment was ignored by Ishler and even supported by him. I did not find any indication if respondents' ever "noticed" this claim. Sexual harassment was not mentioned at all. (Sexual Harassment claim).
3. I did not find any explanation why Ishler discharged me after written complaint about sexual harassment. I have to point out it was not complaint about "*some sort of hostile environment" as indicated in Defendants' brief*, it was a complaint about SEXUAL HARASSMENT (A 16) (Wrongful Discharge claim)

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[1] *In Texas Dept. of Community Affairs v. Burdine*:
"When the plaintiff in a Title VII case has proved a prima facie case of employment discrimination, the defendant bears only the burden of explaining clearly the nondiscriminatory reasons for its actions.
In McDonnell Douglas Corp. v. Green: Supreme Court set forth the basic allocation of burdens and order of presentation of proof in a Title VII case alleging discriminatory treatment

4. I did not find any explanation why Xerox gave false statement to the agency about discharge.(A 15).
   I NEVER HAD ANY CONFLICTS WITH ANYBODY IN THE DEPARTMENT!!!

-The fact I was sexually harassed has nothing to do with "*conflict with co-workers*".

-What facts does this statement prove besides *retaliation and blacklisting?*

Finally, I could not find any remarks defendants NEVER gave this awful statement or any other retaliatory statements to my next employers or potential employers. What statements did they give to everybody interesting to hire me? (Post-retaliation and blacklisting claim).

EEOC AND HELP:

DIRECT EVIDENCES I HAD NO HELP FROM EEOC:

Every respondents' reply contains EEOC remark I did not bring any proof of retaliation in last 300 days before filing the charge with EEOC.

As I mentioned in my claim, I was unable to get any help from EEOC-Buffalo office. I understand Xerox's disappointment I had facts for terminations and endless searching for a job only for the first 685 days after discharge. It is not enough for my former employer!!!

1. I had to write letter to Washington EEOC to get any help. (A 12: Response Letter from 5/6/97);
2. The letter-request to Director of EEOC, Buffalo Office from 7/1/97 to issue "Right-To-Sue" letter: (A 14);
3. This EEOC office never requested any information from Xerox. They indicated they had no need in additional information to make a conclusion.

DIRECT EVIDENCE OF WRONGFUL DISCHARGE AND RETALIATION:

I understand the defendants point: not to apply tolling, or discovery, or willfulness after discovering the document (A 15) that proves wrongful discharge, retaliation and blacklisting. It occurred *850* days from the date of termination. It did not happened in magic 300 days limits. I was not too "diligent" to "investigate" Xerox, Burns Personnel, Mercury Print, Millennium Computer Group, Syracuse Language System and many more companies I applied to while was looking for a job. THE RESPONSE IS : I HAVE NO POWER AND ABILITY.

Defendants do not consider this statement as crucial proof of their discrimination against me as well as facts of terminations-discharges from three other jobs I was able to find for the period from October, 1 1994 (day of termination from Xerox) until September, 1996.
I did not find any remark Xerox HAD business relations with that companies I tried to work for and was DISCHARGED from.

I understand that ignoring or twisting the facts is much easier way to avoid the truthful response to any of my claims.
But I am sure I have the right (constitutional!) to find out the truth and to stop activity of humiliation!!!

WHAT IS VAGUE AND CONFUSING STATEMENTS:

In STATEMENT OF THE CASE on page 2 the brief contains:

*"Although the allegations in the Complaint are **vague and confusing**, petitioner essentially alleged she was subject to **some sort of hostile environment** in 1993 while she worked at Xerox."*

The defendant did not explain what facts they consider as *a vague or confusing* in my complaint or what facts they consider as "*some sort of hostile environment.*"

- Do they consider the fact as vague or confusing: I was one of the best employee in the Lab and should have all rights every person in the Lab had?
- Do they consider the fact as *vague or confusing*: after Ishler's appointment as division manager, I could not work effectively and was begging Ishler to transfer me to any other department. I wasn't allowed to do this even when other managers asked for and many co-workers had this "privilege"?

-Do they consider the fact as *vague or confusing*: I was sexually harassed by co-worker and my verbal complain had a reversed effect. But real fun occurred after written complain: I was discharged by Ishler on the next day of complaint. What type of allegation this fact is for defendants': *confusing or vague*?

- Do they consider the fact as *vague or confusing*: I was unable to find another job after Xerox's termination?

Is it not enough convincing for Xerox three contracts I had were terminated each with employment discrimination? What more impressive proof does this company need? How many companies did they need to put into trouble during magic 300 days after discharge or before filing an EEOC complain to accept the fact they retaliated against me as crazy!?

-Do they consider *the false statement* they gave to the agency as *vague or confusing*?

What facts would **not** be considered as ***vague and confusing?***

SUPERVISOR LIABILITY

Statement on page 3: *"Respondents also moved to dismiss the Complaint against J. M. Ishler on the grounds that Title VII does not impose liability on individuals are not "employers" within the meaning of TitleVII."*

I am sure it is right statements if supervisor has no power to hire or to discharge employee.

An opposite situation happened to me:

I was discharge by Ishler as a representor of employer with full power and responsibilities.

Xerox gave *enormous power* to its managers not just to discharge an individual, but to block him/her from obtaining the right to find another job. It looks destructive from the point of view of any reasonable person.

TIME-BARRED ISSUE

300 days to file charge with EEOC should work only if EEOC is willing to help individual. I would like to repeat my statement because I think defendants doesn't want to hear it:

I would never to file any claim if I had a choice.

My experience to find another job was unsuccessful.

I had to file the case in the court. I tried to avoid this destructive experience to file a case in my attempt to find out the truth and to stop continuing discrimination.

Unfortunately, I did not succeed in my attempts to have a fair trial.

WHAT EVIDENCES WOULD SATISFY DEFENDANTS?

PAGE 4: *"petitioner submitted no **evidences** that Xerox has interfered with her ability to get a job or that it even provided negative references to prospective employers"*
I thought that filing a brief in opposition to Supreme Court will force defendants, at least, to explain their false statement to the agency, the real reason for discharge or any reason for discharge.
I expected defendants to explain relations with Mercury Print, Millennium and Syracuse Language Systems or at least, statement they had no relations with these companies.
I expected defendants to explain what statements they gave to these and other companies.
In VEPRINSKY, v. FLUOR DANIEL, (95-2197, 7-th Cir) Appeal Court stated: "we hold that post-termination acts of retaliation that adversely affect the plaintiff's employment opportunities or are otherwise related to employment are cognizable under Title VII...
The ability to "blacklist" a former employee, and thus foreclose future employment possibilities, is but one example of an employer's power to punish a former employee..".

This conclusion meets my statement why retaliation in my case has to be labeled an ABUSE OF POWER.

I can understand employer's willing to get rid of employee, but I don't understand and never will understand *employer's ability* to blacklist future employment (actually, life) as long as they wish to do so using magic 300 days as supportive argument against employee.

CONCLUSION

I, Victoria Talyansky, pro se, respectfully request this Court consider granting the petition supported by this Reply Brief and allow a more in depth consideration of the arguments:

1. To stop employment discrimination against individuals in its easiest way to perform just because his/her manager is willing to do so.
2. To stop blacklisting as destructive and frustrating phenomenon in employment discrimination.

Respectfully submitted this 10th day of November, 1999.

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